

California Regional Water Quality Control Board
Santa Ana Region

May 16, 2003

ITEM: 9

SUBJECT: Status of Efforts to Require Suspected Dischargers to Investigate
Perchlorate Pollution in the Rialto, Colton and Chino Groundwater
Subbasins

DISCUSSION:

At the April 4, 2003 Board meeting, staff reported that, pursuant to Section 13267, the Executive Officer had issued a total of ten Investigation Orders to suspected dischargers regarding the perchlorate pollution in the Rialto, Colton and Chino Groundwater Subbasins. An additional Investigation Order was issued to General Dynamics Corporation on April 28, 2003. Identified below is the status of the investigations for those suspected dischargers that have conducted activities since the last Board meeting:

County of San Bernardino

In 2002, the County completed preliminary groundwater investigations of their property. On November 15, 2002, an additional work plan was submitted. The Regional Board adopted Cleanup and Abatement Order (CAO) R8-2003-0013 on January 17, 2003, which, in part, required implementation of the work plan after it was approved by the Executive Officer. On January 31, 2003, the Executive Officer approved the work plan. In February 2003, the County filed an appeal regarding the wording in two of the CAO's findings, but stated they were supportive of the CAO and intended to comply with the CAO. A ruling by the SWRCB regarding the County's petition is pending. The County is currently conducting the work required under the CAO. Installation of the first of four additional monitoring wells began on April 8, 2003. The four wells are expected to be completed by May 30, 2003.

American Promotional Events, Inc. - West (APE)

APE submitted the report on their on-site soil investigation on April 14, 2003. Based on the results of their soil sampling and analysis, additional investigation will be required in at least one area of the APE site, where perchlorate was detected at concentrations up to 2,900 micrograms/kilogram in the shallow soil.

Goodrich Corporation

On April 1, 2003, Regional Board staff hosted a meeting of the suspected dischargers of perchlorate in the Rialto and Colton Basins. Staff from the DTSC and the U.S. EPA also attended the meeting. The purpose of the meeting was to facilitate a cooperative effort toward investigation and remediation of the perchlorate pollution. After brief introductory remarks from Board staff, staff from the regulatory agencies left the meeting. The suspected dischargers and their attorneys were then provided a presentation by consultants and staff of the Goodrich Corporation, and were given the opportunity to discuss their views regarding development of a cooperative effort in investigating and remediating the perchlorate pollution. Future meetings of a similar nature may be scheduled if requested by Goodrich and the suspected dischargers.

Board staff met with attorneys and staff from Goodrich on April 2, 2003, to respond to their questions regarding the status of other suspected dischargers in implementing soil and groundwater investigations in Rialto. At the meeting, Goodrich submitted a preliminary draft document that included their research of industrial uses for perchlorate, and information regarding potential dischargers of perchlorate in the Chino Groundwater Subbasins. Board staff is currently reviewing this information.

Pyro Spectaculars by Souza and Astro Pyrotechnics

On March 3, 2003, the Executive Officer conditionally approved two work plans for Pyro Spectaculars and Astro Pyrotechnics that had been submitted on December 9, 2002. An additional sampling proposal for Pyro Spectaculars, a waste containment plan for Astro Pyrotechnics, and a time schedule for the investigation at each site were to be submitted to the Executive Officer by March 19, 2003.

The attorney for Pyro Spectaculars submitted a revised time schedule for completion of these tasks. The proposed schedule is not considered satisfactory, and staff is working with Pyro Spectaculars to modify this schedule.

General Dynamics Corporation

The General Dynamics Corporation utilized storage magazines in North Rialto during the 1980s. On April 28, 2003, the Executive Officer issued a 13267 Investigation Order requiring that General Dynamics Corporation conduct a records investigation of their historical activities at the Rialto bunker site, and submit a report of this investigation by June 25, 2003.

U.S. DoD - Army Corps of Engineers (USACE)

The USACE sent a representative to the April 1, 2003 meeting of suspected dischargers. This USACE staff representative listened to Board staff's introductory remarks, but declined to participate in the meeting with the other suspected dischargers.

We understand that the historical records review of the U.S. DoD activities in Rialto is underway, and a report will be submitted to staff in August 2003.

Emhart Industries, Inc./Black & Decker (former West Coast Loading Corporation/Kwikset)

A work plan, pursuant to a 13267 Order, for a perchlorate investigation at the former West Coast Loading Corporation (WCLC) facility was due on November 22, 2002. Emhart submitted a Petition for Stay and for State Board Review of the 13267 Order. The Stay request was dismissed by the State Board. The Petition for State Board Review is still pending

On May 6 and 7, 2003, Regional Board staff, U.S. EPA representatives and a representative from the Attorney General's office will visit the offices of Allen Matkins, attorneys for Kwikset and Emhart/Black & Decker, to review the 58 boxes of WCLC and Kwikset Locks, Inc., documents in the custody of Allen Matkins. Board staff have sought access to the records since July 2002. It is expected that much of the material will be copied and that documents claimed by Allen Matkins to be "confidential" will be reviewed for the purpose of attempting to locate former WCLC employees. A summary of the findings of the document review will be made at the May 16 Board meeting.

In early March, the Executive Officer set the date of April 3, 2003 for a special hearing by the Board to consider a proposed Cleanup and Abatement Order for Emhart Industries, Inc., and Black & Decker (U.S.), Inc., successors of the former WCLC.

The April 3rd hearing was postponed, pending depositions of former WCLC employees and the outcome of the review of evidence in the 58 boxes.

Presented below are the background and a brief update regarding the Writ of Mandate that was filed by attorneys for Kwikset and Emhart/Black & Decker:

1. On September 13, 2002, the Regional Board held a hearing on Kwikset's appeal of the June 6, 2002 CAO issued by the Executive Officer. The Board rendered an oral decision, rescinding the CAO and directing the Executive Officer to pursue 13267 Investigative Orders. Kwikset requested a written decision. The written decision was issued on November 19, 2002.
2. Kwikset filed a petition with the State Board claiming that it was entitled to a written decision that:
 - (a) contains a specific finding that there is no evidence of discharge of perchlorate by WCLC; and
 - (b) finds that Kwikset Corporation is not the legal successor to WCLC.

On March 13, 2003, the SWRCB issued a letter to Kwikset Corporation dismissing the petition, reasoning that since the CAO was rescinded by the Regional Board, Kwikset is not an "aggrieved party," and only aggrieved parties can file a petition under Water Code Section 13320.

3. On April 11, 2002, Kwikset Corporation filed a Petition for Writ of Mandate in the Superior Court, Riverside County, seeking an order requiring the Regional Board to issue a written order finding Kwikset not to be the legal successor of WCLC and that WCLC did not discharge perchlorate. The Attorney General's office is representing the Regional Board in this matter. The next step is to prepare the administrative record and for the Regional Board's written response to be filed with the court.

At the May 16, 2003 Board meeting, staff will provide information on any further developments, and will continue to update the Board at future meetings on the progress of the perchlorate investigation efforts.